

**China Commercial Foreign Trade (Singapore) Pte Ltd v KLS
Diversified (M) Sdn Bhd** A

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT B
NO WA-22NCC-648-11 OF 2019
KHADIJAH IDRIS J
24 AUGUST 2020

Civil Procedure — Striking out application — Memorandum of appearance C
— Plaintiff applied for striking out defendant's memorandum of appearance
— Whether defendant's solicitors failed to provide evidence to show requisite
warrant or authority to act on behalf of defendant company — Whether
defendant's warrant to act document could not be disclosed to plaintiff — Whether
defendant's claims were scandalous, frivolous and vexatious and abuse of process of D
court — Whether plaintiff's striking out application should be allowed — Rules
of Court 2012 O 18 r 19(1)(b)

The plaintiff made an application via encl 36 to strike out the memorandum of
appearance filed by Messrs Mohd Zawahid & Co under O 18 r 19(1)(b) and E
(d) of the Rules of Court 2012 ('the ROC 2012'). The plaintiff and the
defendant entered into certain contract for the purchase of refined bleached
deodorised palm olein ('the palm oil'). The plaintiff arranged for a letter of
credit No 025000884840 ('the letter of credit') dated 6 November 2019 to be F
issued by CIMB Bank Bhd (Singapore) in favour of the defendant. It was the
plaintiff's pleaded case that in entering into the contracts, the plaintiffs had
relied on the defendant's representation which turned out to be false and/or
fraudulent with the intention to cause loss and damage to the plaintiff. Via an
ex parte notice of application for an interim injunction, the plaintiff obtained
an ex parte interim injunction ('ex parte order') to restrain the defendant from G
presenting, negotiating and receiving all or any part of the monies payable
pursuant to or under the letter of credit. The defendant sought for time to file
an affidavit to oppose the plaintiff's injunction application. On 21 January
2020, the plaintiff's injunction application was withdrawn by the plaintiff as H
the letter of credit had expired on 21 December 2019. The ad interim
injunction was no longer in effect. On 20 November 2019, by way of notice of
termination, the plaintiff terminated the contracts with immediate effect. The
notice of termination was served on the defendant. In the writ and statement of
claim, the plaintiff sought for a declaration that the defendant was not entitled I
to all or any part of the monies under the letter of credit and that the letter of
credit was cancelled with immediate effect. The plaintiff further sought for a
permanent injunction to restrain the defendant from presenting, negotiating,
receiving all or any part of the monies payable pursuant to or under the letter
of credit. In the statement of defence, the defendant denied all the allegations

A of fraudulent representation made by the plaintiff. The plaintiff contended that neither Messrs Mohd Zawahid & Co nor Messrs Zaharudeen Harun & Co had the requisite warrant or authority to act for the defendant in the proceedings. The defendant contended that they had appointed Messrs Mohd Zawahid & Co as its solicitor to act on behalf of the defendant company and subsequently
B appointed Messrs Zaharudeen Harun & Co to replace Messrs Mohd Zawahid & Co. The defendant further contended that although the defendant was informed of the request by the plaintiff's solicitor for a copy of the warrants to act, the defendant refused to accede to the request as it was a personal matter between the defendant and its solicitor.
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Held, allowing plaintiff's application in encl 36 with costs of RM10,000 to be paid by Messrs Zaharudeen Harun & Co:

(1) It was apparent that the defendant's solicitor, either Messrs Zaharudeen
D Harun & Co or Messrs Mohd Zawahid & Co failed to provide evidence to show the requisite warrant or authority to act on behalf of the defendant company which the defendant insisted exist. The defendant's reliance on *Ulimas Sdn Bhd v Hi-Summit Construction Sdn Bhd and other appeals* [2017] 2 MLJ 153 was misplaced in law and in fact. The court was in agreement with the plaintiff's contention that the warrant or
E authority to act was ineffective as the deponent acting singly had no implied authority to bind the defendant company. It was the defendant's articles of association that required the business of the defendant in its entirety to be managed by the directors and it was clearly required the directors to act as a collective body in the management and affairs of the
F defendant (see paras 24 & 26).

(2) There was no issue on the defendant's contention that the defendant was not obliged to disclose the warrant or authority to act because the said document formed part of the solicitor client relationship between the defendant and their solicitor. No issue that such document was prohibited to be disclosed because of the client solicitor relationship. The defendant's contentions that the warrant or authority to act was privileged and could not be disclosed was without any basis and untenable (see paras 28–29).
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(3) All the cause papers filed for and on behalf of the defendant were scandalous, frivolous and vexatious and an abuse of process of court (see para 30).

I [Bahasa Malaysia summary]

Plaintif telah membuat permohonan melalui lampiran 36 untuk membatalkan memorandum kehadiran yang difailkan oleh Tetuan Mohd Zawahid & Co di bawah A 18 k 19(1)(b) dan (d) Kaedah-Kaedah Mahkamah 2012 ('KM 2012'). Plaintiff dan defendan telah memasuki kontrak tertentu untuk

pembelian minyak sawit yang ditapis, diluntur dan dinyahbau ('minyak sawit tersebut'). Plaintiff telah mengatitkan agar satu surat kredit No 025000884840 ('surat kredit') bertarikh 6 November 2019 dikeluarkan oleh CIMB Bank Bhd (Singapura) kepada defendan. Ia adalah kes yang dipli oleh plaintiff bahawa dengan memasuki kontrak tersebut, plaintiff telah bergantung kepada representasi defendan yang ternyata adalah palsu dan/atau suatu penipuan dengan niat untuk menyebabkan kehilangan dan kerugian kepada plaintiff. Melalui satu notis ex parte untuk permohonan injunksi interim, plaintiff telah memperoleh injunksi interim ex parte ('perintah ex parte') bagi menghalang defendan daripada membentangkan, berunding dan menerima semua atau sebahagian wang yang perlu dibayar menurut atau di bawah surat kredit. Defendan memohon masa untuk memfailkan afidavit untuk menentang permohonan injunksi plaintiff. Pada 21 Januari 2020, permohonan injunksi plaintiff telah ditarik balik oleh plaintiff sebagai surat kredit telah tamat pada 21 Disember 2019. Arahan interim tidak lagi berkuat kuasa. Pada 20 November 2019, melalui notis penamatan, plaintiff telah menamatkan kontrak dengan serta merta. Notis penamatan itu telah disampaikan ke atas defendan. Dalam writ dan pernyataan tuntutan, plaintiff memohon deklarasi bahawa defendan tidak berhak kepada semua atau mana-mana bahagian wang yang di bawah surat kredit dan surat kredit itu telah dibatalkan dengan serta merta. Plaintiff selanjutnya telah memohon injunksi kekal bagi menghalang defendan daripada membentangkan, berunding, menerima semua atau mana-mana bahagian wang yang perlu dibayar menurut atau di bawah surat kredit. Dalam pernyataan pembelaan, defendan menafikan semua dakwaan berhubung representasi berunsur penipuan yang dibuat oleh plaintiff. Plaintiff berpendapat bahawa Tetuan Mohd Zawahid & Co atau Tetuan Zaharudeen Harun & Co tidak mempunyai waran atau kuasa yang diperlukan untuk bertindak bagi defendan dalam prosiding. Defendan berhujah bahawa mereka telah melantik Tetuan Mohd Zawahid & Co sebagai peguam untuk bertindak bagi pihak syarikat defendan dan seterusnya melantik Tetuan Zaharudeen Harun & Co untuk menggantikan Tetuan Mohd Zawahid & Co. Defendan selanjutnya berhujah bahawa walaupun defendan dimaklumkan tentang permintaan oleh peguam plaintiff untuk salinan waran untuk bertindak, defendan enggan akur dengan permintaan tersebut kerana itu adalah perkara peribadi antara defendan dan peguamnya.

Diputuskan, membenarkan permohonan plaintiff dalam lampiran 36 dengan kos sebanyak RM10,000 dibayar oleh Messrs Zaharudeen Harun & Co:

- (1) Ia adalah jelas bahawa peguam defendan, sama ada Tetuan Zaharudeen Harun & Co atau Tetuan Mohd Zawahid & Co gagal mengemukakan keterangan untuk menunjukkan waran atau kuasa yang diperlukan untuk bertindak bagi pihak syarikat defendan yang defendan menegaskan wujud. Kebergantungan defendan kepada kes *Ulimas Sdn Bhd v Hi-Summit Construction Sdn Bhd and other appeals* [2017] 2 MLJ

- A** 153 adalah tidak tepat dari segi undang-undang dan fakta. Mahkamah bersetuju dengan hujah plaintif bahawa waran dan kuasa untuk bertindak tidak berkesan kerana deponen yang bertindak secara tunggal tidak mempunyai kuasa tersirat untuk mengikat syarikat defendan. Ia adalah artikel persatuan defendan yang menghendaki perniagaan defendan secara keseluruhannya diuruskan oleh pengarah-pengarah dan ia jelas menghendaki pengarah-pengarah untuk bertindak sebagai badan kolektif dalam pengurusan dan hal ehwal defendan (lihat perenggan 24 & 26).
- B**
- C** (2) Tiada isu berhubung hujah defendan bahawa defendan tidak diwajibkan untuk mendedahkan waran atau kuasa untuk bertindak kerana dokumen tersebut merupakan sebahagian daripada hubungan peguam dan anak guam antara defendan dan peguamnya. Tiada isu bahawa dokumen tersebut dilarang untuk didedahkan kerana hubungan anak guam dan peguam. Hujah defendan bahawa waran atau kuasa untuk bertindak diberi hak istimewa dan tidak dapat didedahkan adalah tanpa asas dan tidak dapat dipertahankan (lihat perenggan 28–29).
- D**
- E** (3) Kesemua kertas kausa yang difailkan untuk dan bagi pihak defendan adalah mengaibkan, remeh dan menyusahkan dan penyalahgunaan proses mahkamah (lihat perenggan 30).]

Cases referred to

- F** *Bandar Builders Sdn Bhd v United Malayan Banking Corporation Bhd* [1993] 3 MLJ 36, SC (refd)
- Gurbachan Singh s/o Bagawan Singh & Ors v Vellasamy s/o Pennusamy & Ors (on their behalf and for the 213 sub-purchasers of plots of land known as PN35553, Lot 9108, Mukim Hutan Melintang, Hilir Perak) and other appeals* [2015] 1 MLJ 773; [2015] 1 CLJ 719, FC (refd)
- G** *Syawal Enterprise Sdn Bhd & Anor v Dayadiri Sdn Bhd* [1990] 3 MLJ 239, HC (refd)
- Tan Lian Hong v Min Ngai Knitting Factory (M) Ltd & Anor* [1974] 1 MLJ 76 (refd)
- H** *Twenty First Century Oils Sdn Bhd v Bank of Commerce (M) Bhd & 2 Ors* [1993] 3 CLJ 667, HC (refd)
- UEM Genisys Sdn Bhd v Shimizu Corporation & Anor* [2003] MLJU 179, HC (refd)
- Ulimas Sdn Bhd v Hi-Summit Construction Sdn Bhd and other appeals* [2017] 2 MLJ 153; [2017] 2 CLJ 636, FC (dstd)
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Legislation referred to

Rules of Court 2012 O 18 r 19, 19(1)(b), (1)(d)
Companies Act 1965 Fourth Schedule

John Mathew (Edward Kuruvilla with him) (Christopher & Lee Ong) for the plaintiff. A
Mohd Zaharudeen Harun (Zaharudeen Harun & Co) for the defendant.

Khadijah Idris J:

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INTRODUCTION

[1] Via encl 36 the plaintiff applied for, among others, that the memorandum of appearance filed by Messrs Mohd Zawahid & Co purportedly for and on behalf of the defendant be struck out. The application was made under O 18 r 19(1)(b) and/or (d) of the Rules of Court 2012 ('the RoC 2012') and/or the inherent jurisdiction of the court. C

[2] After hearing submissions of the parties and considering the affidavit evidence, this court allowed encl 36 with costs. Aggrieved by the said decision, the defendant appealed. D

BACKGROUND FACTS

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[3] The plaintiff is a company incorporated in Singapore and engage in the business of wholesale trade in goods/cargo such as refined bleached deodorised palm olein.

[4] The defendant is a locally incorporated company and engage in the trading of palm oil. F

[5] The plaintiff and the defendant entered into certain contracts for the purchase of refined bleached deodorised palm olein ('palm oil'). Pursuant thereto on 6 November 2019, the plaintiff arranged for a letter of credit No 025000884840 dated 6 November 2019 to be issued by CIMB Bank Bhd (Singapore) ('letter of credit') in favour of the defendant. G

[6] It is the plaintiff's pleaded case that in entering into the contracts, the plaintiff had relied on the defendant's representation which have turned out to be false and/or fraudulent with the intention to cause loss and damage to the plaintiff. The fraudulent representation, among others, includes: H

- (a) that the plaintiff would be allowed to carry out inspection for the purpose of ascertaining that the palm oil exists and complies with the strict specifications set by the Chinese authorities; I
- (b) that the defendant had an alleged storage agreement with Felda Johore Bulkurs, Pasir Gudang;

- A (c) that the defendant had the palm oil at Agri Asia Refinery Sdn Bhd ('Agri Asia Refinery') and had dealings with Agri Asia Refinery;
- (d) that the defendant had sent a sample of the palm oil to CCIC for testing; and
- B (e) that the defendant worked with another refinery located near Agri Asia Refinery.

C [7] Via an ex parte notice of application for an interim injunction ('plaintiff's application for injunction') the plaintiff obtained, on 18 November 2019, an ex parte interim injunction ('ex parte order') where, among others, an interim injunction was granted to restrain the defendant (whether by itself or by its directors, officers, shareholders, employees, agents or servants or otherwise) from presenting, negotiating and receiving all or any part of the monies payable pursuant to or under the letter of credit.

D [8] On the return date 2 December 2019, the defendant sought for time to file an affidavit to oppose the plaintiff's injunction application. The plaintiff applied orally and with the consent of the defendant, this court granted an ad interim order on the terms of the said ex parte order pending the disposal of the plaintiff's injunction application on an inter parties basis ('ad interim injunction'). However on 21 January 2020 the plaintiff's injunction application was withdrawn by the plaintiff as the letter of credit had expired on 21 December 2019. Thus the ad interim injunction is no longer in effect.

E [9] On 20 November 2019, by way of notice of termination, the plaintiff amongst others, terminated the contracts with immediate effect. The notice of termination were served on the defendant.

F [10] Thus, in its writ and statement of claim the plaintiff seek for a declaration that the defendant is not entitled to all or any part of the monies under the letter of credit and that the letter of credit be cancelled with immediate effect. The plaintiff also seek for a permanent injunction to restrain the defendant from presenting, negotiating, receiving all or any part of the monies payable pursuant to or under the letter of credit.

G [11] The defendant filed its memorandum of appearance (encl 10) through its solicitor then Messrs Mohd Zawahid & Co. Subsequently on 6 December 2019 a notice of change of solicitor was filed by Messrs Zaharudeen Harun & Co as the new solicitor for the defendant replacing Messrs Mohd Zawahid & Co (see encl 15).

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[12] In its statement of defence the defendant denies all the allegations of fraudulent representation made by the plaintiff. The defendant's defence (see encl 30) may be summarised as follows:

- (a) it is always the requirement that the palm oil will be inspected by CICC Malaysia Commodities Inspection Sdn Bhd based in Malaysia and not CICC Singapore Ltd. The defendant is very well verse with the procedure relating to export of palm oil;
- (b) at the material time, defendant has yet to enter into a contract with Felda Johore Bulkurs as it was at an early stage. The defendant has had previous dealings with Felda Johore Bulkurs but on an ad hoc basis depending on the defendant's requirement;
- (c) the defendant has had previous dealings with Agri Asia Refinery where the defendant had collaborated with Agri Asia Refinery to process crude palm oil. At the material time the defendant has yet to deal with Agri Asia Refinery as the defendant has ample time to prepare for the palm oil and for it to be delivered to the plaintiff in accordance with the contracts. It was the plaintiff who had prematurely made false allegations against the defendant without any basis;
- (d) the plaintiff has unilaterally terminated the contracts and therefore in breach of the contracts. By obtaining the injunction, the defendant was estopped from executing the contracts despite the validity of the contracts were still subsisting. At all material time the defendant, based on its experience and position in the business of trading in palm oil, is able and willing to perform the terms of the contracts; and
- (e) thus, in its counterclaim, the defendant seek an order for specific performance against the plaintiff to fulfil the terms of the contracts and that the termination of the contracts by the plaintiff is unlawful and premature. The defendant also seek damages.

ENCLOSURE 36 DATED 10 JANUARY 2020 ('APPLICATION TO STRIKE OUT')

[13] In the application to strike out, the plaintiff prays for the following reliefs:

- (a) that the memorandum of appearance dated 25 November 2019 (encl 10) filed by Messrs Mohd Zawahid & Co purportedly for and on behalf of the defendant (hereafter 'the impugned memorandum of appearance') be struck out;
- (b) consequently, that all cause papers, applications, affidavits and other papers filed in the instant proceedings by Messrs Mohd Zawahid & Co and subsequently Messrs Zaharudeen Harun & Co purportedly for and

- A** on behalf of the defendant subsequent thereto, including the defence and counterclaim dated 20 December 2019, be struck out;
- (c) that the costs of this application be paid by the defendant and/or Messrs Zaharudeen Harun & Co to the plaintiff; and
- B** (d) such further or other orders, as this honourable court may deem fit and proper.

THE PLAINTIFF'S CONTENTIONS

- C** [14] It is the plaintiff's contentions that neither Messrs Mohd Zawahid & Co nor Messrs Zaharudeen Harun & Co has/had the requisite warrant/authority to act for the defendant in the instant proceedings. In its notice of application the plaintiff states, among others, the following grounds:
- D** (a) despite the plaintiff's requests to produce the requisite warrant/authority to act and despite having ample opportunity to do so, Messrs Zaharudeen Harun & Co has failed and/or refused to and/or neglected to prove that they have the requisite warrant/authority to act for the defendant in the instant proceedings;
- E** (b) despite the plaintiff's requests to produce the requisite warrant/authority to act and despite also having ample opportunity to do so, Messrs Mohd Zawahid & Co failed and/or refused and/or neglected to prove that they had the requisite warrant/authority to act for the defendant in the instant proceedings for the period 25 November 2019 (ie the date of the impugned memorandum of appearance) to 6 December 2019;
- F**
- (c) as a consequence to the above, the impugned memorandum of appearance as well as all cause papers, applications, affidavits and other papers filed in the instant proceedings by Messrs Mohd Zawahid & Co and Messrs Zaharudeen Harun & Co purportedly for and on behalf of the defendant subsequent thereto, are invalid, null and/or void and ought to be struck out;
- G**
- H** (d) further and in any event, if Messrs Zaharudeen Harun & Co is able to produce the requisite warrant/authority to act for the defendant in the instant proceedings following the receipt of the plaintiff's application herein, the defendant and/or Messrs Zaharudeen Harun & Co ought to bear the costs of the plaintiff's application on a full indemnity basis;
- I** (e) the impugned memorandum of appearance as well as all cause papers, applications, affidavits and other papers filed in the instant proceedings by Messrs Mohd Zawahid & Co and Messrs Zaharudeen Harun & Co purportedly for and on behalf of the defendant, by virtue of the above reasons are consequently:

- (i) scandalous, frivolous and/or vexatious; and/or
- (ii) an abuse of the process of the court.

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THE DEFENDANT'S CONTENTIONS

[15] The defendant's affidavit was affirmed by one Harirah bt Omar ('deponent') who is a director and also the majority shareholder of the defendant. It is averred by the deponent as follows:

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- (a) the defendant has appointed Messrs Mohd Zawahid & Co as its solicitor to act on behalf of the defendant company and subsequently appointed Messrs Zaharudeen Harun & Co to replace Messrs Mohd Zawahid & Co;
- (b) the deponent had signed the respective warrant to act for in her capacity as a director and the majority shareholder of the defendant with the consent of the rest of the members of the board of directors;
- (c) although the defendant was informed of the request by the plaintiff's solicitor for a copy of the warrants to act, the defendant refused to accede to such request as it is a personal matter between the defendant and its solicitor (client-solicitor's privilege); and
- (d) it is none of the plaintiff's business to question the capacity of the solicitor appointed by the defendant and the defendant has no valid reasons to request for the warrants to act.

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THE LAW

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[16] Under O 18 r 19 of the ROC 2012 the court may at any stage of the proceedings order to be struck out any writ in the action, pleading or endorsement where such writ, pleading or endorsement is, inter alia, scandalous, frivolous or vexatious or it is otherwise an abuse of the process of the court. In the Supreme Court case of *Bandar Builders Sdn Bhd v United Malayan Banking Corporation Bhd* [1993] 3 MLJ 36 it was held as follows:

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The principles upon which the court acts in exercising its power under any of the four limbs of O 18 r 19(1) of the Rules of the High Court are well settled. *It is only in plain and obvious cases that recourse should be had to the summary process under this rule* (per Lindley MR in *Hubbuck & Sons v Wilkinson, Heywood and Clark* [1899] 1 QB 86, p 91), and *this summary procedure can only be adopted when it can be clearly seen that a claim or answer is on the face of it 'obviously unsustainable'* (*A-G of Duchy of Lancaster v London and North Western Rly Co* [1892] 3 Ch 274 (CA)). *It cannot be exercised by a minute examination of the documents and facts of the case, in order to see whether the party has a cause of action or a defence* (*Wenlock v Moloney* [1965] 1 WLR 1238; [1965] 2 All ER 871 (CA)). The authorities further show that if there is a point of law which requires serious discussion, an objection should be taken on the pleadings and the point set down for argument under O 33 r 3 (which is in para

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- A** materia with our O 33 r 2 of the Rules of the High Court) (*Hubbuck & Sons v Wilkinson, Heywood and Clark*). The court must be satisfied that there is no reasonable cause of action or that the claims are frivolous or vexatious or that the defences raised are not arguable. (Emphasis added.)
- B** [17] In relation to warrant/authority to act, in *Syawal Enterprise Sdn Bhd & Anor v Dayadiri Sdn Bhd* [1990] 3 MLJ 239 the High Court held, amongst others, that:
- C** (a) the lack of authority of solicitors can be challenged at any stage of the proceedings;
- (b) upon the challenge having been made, the burden lies with solicitors being challenged to prove that they have the requisite warrant/authority to act; and
- D** (c) failure to discharge such burden shall result in the striking out of the particular claim, pleading or endorsement.
- E** [18] The principles governing the requirement of solicitors to prove the requisite warrant/authority to act for a party are applicable to solicitors acting for a defendant in as much as they are applicable to solicitors acting for a plaintiff (*Tan Lian Hong v Min Ngai Knitting Factory (M) Ltd & Anor* [1974] 1 MLJ 76 (FC)).
- F** [19] In the event a court make a finding that a claim, pleading or endorsement has been filed by a firm of solicitors without the requisite warrant/authority to act and make an order that the said claim, pleading or endorsement be struck out, the court has the discretion to make an order for costs to be paid by the firm of solicitors who filed the same (*UEM Genisys Sdn Bhd v Shimizu Corporation & Anor* [2003] MLJU 179; *Tan Lian Hong v Min Ngai Knitting Factory*).
- G**

FINDINGS OF THE COURT

- H** [20] The affidavit evidence shows the following request were made by the plaintiff's solicitor to the defendant's solicitor for a copy of the warrant/authority to act:
- I** (a) after the memorandum of appearance dated 25 November 2019 (encl 10) was filed by Messrs Mohd Zawahid & Co on 27 November 2019, the plaintiff's solicitor issued a letter dated 27 November 2019 to Messrs Mohd Zawahid & Co (see exh ZYY3 of the plaintiff's affidavit encl 37) requesting for a copy of the requisite warrant to act ('plaintiff's first request'). Messrs Mohd Zawahid & Co did not respond to the request;

- (b) at the return date of the plaintiff's application for injunction on 2 December 2019 before the learned judge, the plaintiff made a fresh request that Messrs Mohd Zawahid & Co produce a copy of their requisite warrant/authority to act for the defendant ('plaintiff's second request'). En Mohd Zawahid of Messrs Mohd Zawahid & Co informed the learned judge that Messrs Mohd Zawahid & Co will take steps to send across a copy of their warrant/authority to act for the defendant, duly signed by all directors of the defendant. On 4 December 2019 the plaintiff's solicitor was informed by Messrs Mohd Zawahid & Co that a copy of the same will be furnished to the plaintiff by the defendant's new solicitors in the matter (see exh ZYY4 of the plaintiff's affidavit encl 37);
- (c) on 17 December 2019, the plaintiff's solicitors issued a formal demand to Messrs Zaharudeen Harun & Co for, amongst others, the following ('plaintiff's third request'):
- (i) that Messrs Zaharudeen Harun & Co serve on the plaintiff's solicitors a copy of their warrant/authority to act for the defendant, duly signed by all of the defendant's directors, within seven days from the date of the letter;
 - (ii) that Messrs Zaharudeen Harun & Co serve on the plaintiff's solicitors a copy of Messrs Mohd Zawahid & Co's warrant/authority to previously act for the defendant, duly signed by all of the defendant's directors, in accordance with the representation made to the learned judge on 2 December 2019, within seven days from the date of the letter;
 - (iii) that Messrs Zaharudeen Harun & Co make the necessary arrangements to have all four of the defendant's directors present at their offices sometime that week (ie on or before 20 December 2019) for the plaintiff's solicitors to effect personal service of the ad interim injunction on all of them. Such request was made due to the failed attempts to effect personal service of the ex parte order on the directors of the defendant (see the plaintiff's affidavit encl 14); and
 - (iv) that Messrs Zaharudeen Harun & Co clarify the status of 'Rafique Siddique Gulam Ahamed (NRIC No Z4260009)' (one of the defendant's director), within seven days from the date of the letter (according to the defendant a search conducted with the the National Registration Department of Malaysia ('NRD') shows that the NRD does not have any record of an individual by the name of 'Rafique Siddique Gulam Ahamed' with the NRIC No 'Z4260009').

There was no response from the defendant's solicitor on the plaintiff's third request.

- A [21] The defendant relies on the Federal Court case *Ulimas Sdn Bhd v Hi-Summit Construction Sdn Bhd and other appeals* [2017] 2 MLJ 153; [2017] 2 CLJ 636 to oppose the application to strike out. In its written submission the defendant reproduce the following extract from the judgment of the Federal Court:
- B As a general rule, the courts have always refrained from interfering with the internal management of company. Similarly, when dealing with authority to commence legal proceedings, it is absurd for us to go behind the written warrant to act as the board can always ratify any action commenced without proper authority. To require
- C the court to go behind a warrant to act and investigate the internal management of a corporate litigant would be an affront to the fundamental principles of company law and the proper administration of justice
- It must be noted and as correctly pointed out by the plaintiff, the question that was considered by the Federal Court was this:
- D Where authority of a solicitor to use the name and engage a company in litigation is in doubt or is challenged, is a court of law bound to accept *a warrant to act produced by the solicitor containing the signature of a director as conclusive evidence of authority* given by the company as a legal person without more? (Emphasis added.)
- E [22] Based on the facts the Federal Court in *Ulimas Sdn Bhd v Hi-Summit Construction Sdn Bhd and other appeals* found there was in fact a decision of the board of directors of the respondent to commence and continue with the suit as evident by the warrant to act dated 3 December 2003 signed by two out of three directors.
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- G [23] Unlike in the instant case, in the case of *Ulimas Sdn Bhd v Hi-Summit Construction Sdn Bhd and other appeals*, in the proceedings at the High Court the warrant to act was produced by the solicitor for the plaintiff when challenged by the defendant and that the warrant was signed by the majority of the shareholders of the defendant company. It was in this context that the Federal Court said it is absurd for the court to go behind the written warrant to act and that to require the court to go behind a warrant to act and investigate the internal management of a corporate litigant would be an affront to the
- H fundamental principles of company law and the proper administration of justice.
- I [24] In the instant case, it is apparent that the defendant's solicitor be it Messrs Zaharudeen Harun & Co or Messrs Mohd Zawahid & Co has failed to provide evidence to show the requisite warrant/authority to act on behalf of the defendant company which the defendant insists exists. Thus the defendant's reliance on *Ulimas Sdn Bhd v Hi-Summit Construction Sdn Bhd and other appeals* is misplaced in law and in fact.

[25] It was averred by the defendant's deponent that she had, in her capacity as a director and the majority shareholder of the defendant and with the consent of the rest of the members of the board of directors, signed the respective warrant/authority to act appointing Messrs Mohd Zawahid & Co and subsequently Messrs Zaharudeen Harun & Co to act on behalf of the defendant company.

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[26] In this respect, this court is in agreement with the plaintiff's contentions that such warrant/authority to act is ineffective as the deponent acting singly has no implied authority to bind the defendant company (*Twenty First Century Oils Sdn Bhd v Bank of Commerce (M) Bhd & 2 Ors* [1993] 3 CLJ 667). It is the defendant's articles of association that requires the business of the defendant in its entirety to be managed by the directors and clearly requires the directors to act as a collective body in the management and affairs of the defendant (see Table A to the Fourth Schedule of the Companies Act 1965, paras 73–78).

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[27] Besides not producing the requisite warrant/authority to act, the deponent also failed to aver and provide evidence that the board of directors (acting as a collective body) of the defendant company has resolved to appoint Messrs Mohd Zawahid & Co and subsequently Messrs Zaharudeen Harun & Co to act on behalf of the defendant company. In addition to the requirement for the directors to act as a collective body, it is to be noted that Article 5 of the defendant's articles of association provides that a resolution in writing of the board of directors is only effective if signed/approved by majority of the directors, namely, three of the four directors.

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[28] The defendant contends they are not obliged to disclose the warrant/authority to act because the said document forms part of the solicitor-client's relationship which exists between the defendant and their solicitor. The defendant cited the case of *Gurbachan Singh s/o Bagawan Singh & Ors v Vellamy s/o Pennusamy & Ors (on their behalf and for the 213 sub-purchasers of plots of land known as PN35553, Lot 9108, Mukim Hutan Melintang, Hilir Perak) and other appeals* [2015] 1 MLJ 773; [2015] 1 CLJ 719 to support its contentions. However the issue as evident in the extract reproduced by the defendant concerned whether a client-solicitor relationship exists which is a question of fact. There was no issue (neither a ruling made by the court) in the said case that a client is not obliged to produce the warrant/authority to act because there exist a client-solicitor relationship and therefore such a document is a privileged document as argued by the defendant in the instant case. Thus the said case cited by the defendant does not in any way support the defendant's argument.

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[29] In this respect, reference is made to the case of *Ulimas Sdn Bhd v Hi-Summit Construction Sdn Bhd and other appeals*. In the said case the Federal

A Court found the warrant to act which was produced by the plaintiff was sufficient authorization. There was no issue that such a document was prohibited from being disclosed because of the client-solicitor relationship. Accordingly the defendant's contentions that the warrant/authority to act is privileged and cannot be disclosed is without any basis and untenable.

B CONCLUSION

[30] Premised on the facts and the defendant's reluctance and/or inability to produce the requisite warrant to act, the reasonable inference that may be concluded is that Messrs Mohd Zawahid & Co and subsequently Messrs Zaharudeen Harun & Co does not have the requisite authority to act for the defendant. This court therefore found the defendant's solicitor Messrs Zaharudeen Harun & Co has failed to prove that it has the requisite warrant to act for the defendant company. Thus all the cause papers filed for and on behalf of the defendant are scandalous, frivolous and vexatious and an abuse of the process of the court. Accordingly order in terms of the prayers in encl 36 was granted with costs of RM10,000 to be paid by Messrs Zaharudeen Harun & Co.

E *Plaintiff's application in encl 36 allowed with costs of RM10,000 to be paid by Messrs Zaharudeen Harun & Co.*

Reported by Mohd Kamarul Anwar

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